

Case No. **S040674**

IN THE SUPREME COURT OF CALIFORNIA

CHURCH OF SCIENTOLOGY INTERNATIONAL,

Plaintiff and Respondent,

vs.

GERALD ARMSTRONG,

Defendant and Appellant.

**SUPREME COURT
FILED**

JUN 28 1994

Robert Wandruff Clerk

DEPUTY

After A Decision By The Court Of Appeal
Second Appellate District, Division Four
Case No. B069450

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PETITION FOR REVIEW

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unwittingly lend its assistance to the consummation or encouragement of what public policy forbids [and] may do so on its own motion."]. ¹/

The issue of public welfare we ask this court to immediately address by this petition is the protection of "fair play" in the administration of justice and protection of the rights of all litigants to prepare their cases without suffering improper disadvantage and hardships unfairly purchased by their opponents.

We submit that unless this court accepts this case for review, a terrible precedent may be set that threatens our truth seeking system with irreparable harm. Until this issue is resolved, harm to litigation remains on-going. We submit the public needs a swift resolution.

The agreement provides Petitioner will: (1) not be amenable to service of process, (2) not voluntarily speak to or assist an adverse Scientology litigant, including governmental agencies, (3) not voluntarily testify on behalf on any litigant adverse to Scientology, (4) participate in a sham appeal and a sham trial, and (5) secrete documents from the government and litigants.

The implications of this case are clearly broader than the

¹ If the question of illegality develops during the course of a trial, and when a court discovers a fact which indicates that the contract involved is illegal and ought not to be enforced, the court must instigate an inquiry in relation thereto. Thus, whenever the evidence discloses the relations of the parties to the transaction to be illegal and against public policy, it becomes the duty of the court to refuse to entertain the action. The disclosure is fatal to the case, and the court is justified in rendering judgment that neither party take anything from the other. (Agran v. Shapiro (1954) 127 Cal.App.2d.Supp. 807, 273 P.2d 619, 631)

participants. Scientology has acknowledged a "global settlement" wherein they have similarly contracted with other former Scientologists (111-116, 667) ²/, the testimony of many of whom has been acknowledged by the courts to be accurate and trustworthy (473) and has led to adverse Scientology judgments. (Wollersheim v. Church of Scientology (1989) 212 Cal.App.3d 872) In at least two known cases, the purchase of the non-cooperation agreement took place outside of any litigation, merely requested of ex-Scientologists leaving the organization (294-314)

As will be shown below, the trial court on an application for a preliminary injunction, rewrote the contract and then applied a "balancing test" of the public policy against hindering the administration of justice and the public policy of upholding settlements. It concluded that a limited preliminary injunction should issue preventing Armstrong from voluntarily assisting any private "plaintiff" prosecuting a claim against Scientology. Armstrong was not prohibited from assisting any defendant and was not prohibited from assisting any governmental entity, nor ordered to hide or run from process servers.

In so doing, Judge Ronald Sohigian concluded public policy was not violated; apparently because he rewrote the contract so as to eliminate the provisions that he believed to violate public policy.

On appeal, we asked the appellate court to declare that the contract itself was **not enforceable** as it violated public policy,

² All page citations refer to the record that is in the Second District Court of Appeal.

and, further, that the limited injunction allowed by the trial court, i.e., not voluntarily assisting a private plaintiff prosecuting a claim against Scientology was also clearly in violation of public policy. The public is served equally by a private Plaintiff having an equal right to justice.

The appellate court, despite its obligation to do so, as stated above, refused to specifically rule whether or not the contract violated public policy, or even if the limited preliminary injunction violated policy, but stated:

"We conclude that the narrowly-limited preliminary injunction, which did not finally adjudicate the merits of Armstrong's claims, was not an abuse of the trial court's discretion to make orders maintaining the status quo and preventing irreparable harm pending the ultimate resolution of the merits."

(Exhibit A at 2)

We ask this court to see the irreparable harm to adverse Scientology litigants that remains ongoing during this "status quo," and how the public has an interest in the same.

Until the essence of this contract is declared illegal, all who have signed will avoid process and refuse to cooperate out of fear of Scientology's wealth and willingness to sue.

The fact that the subject contract is pursuant to settlement, or that the proponent of the contract might lose the "benefit of his bargain," has always been held irrelevant when the contract violates public policy.

In Fong vs. Miller, (1951) 105 Cal.App.2d 411, 414-415, enforcement of such settlements was denied:

"Appellants bitterly complain that the court's action leaves the Respondent unjustly enriched. The complaint is a familiar one, it is generally made by those who, deeming themselves wronged by their companion in illegal ventures, find themselves denied of any right to enforce their unlawful agreements. Their pleas have always been unavailing. This rule is not generally applied to secure justice between parties who have made an illegal contract, but from regard for a higher interest -- that of the public, whose welfare demands that certain transactions be discouraged" (at 414-415)

And in Tappan vs. Albany Brewing Co., 80 Cal. 570, the Court stated:

"It was contended by the Respondent that this was nothing more than a payment of a sum of money by way of a compromise of litigation, and that such contracts have been upheld. We do not so construe the agreement. It was a promise to pay...for the concealment of a fact from the court and the parties material to the rights of said parties, and which it was her duty to make known. Such a contract was against public policy..."

The appellate court's upholding of the trial court's preliminary injunction refers to a balancing test between Scientology's rights and Armstrong's rights, and notes Armstrong may contract away First Amendment rights. This Petition does not so much address Armstrong's rights as it addresses those of the public. It addresses the rights of litigants in battle with the litigious Scientology organization, and by implication, the future of other litigants since one can expect that if Scientology is ultimately successful, other settling defendants facing other litigation will soon be placing such clauses routinely in settlement agreements.

We assert the public has an interest in litigation brought by plaintiffs seeking redress of social harms. Thus the public also has an interest in the trier of fact having complete access to

information gathering so that justice may prevail. Litigation does more than compensate. Often, it judicially legislates, and restrains antisocial behavior. ^{3/}

The public has an interest in truth being obtained in all litigation. It is the taxpayer's money that pays for the system. During the saga that has led to this Petition, the issue of whether this contract violates public policy had been repeatedly put off, despite the cited mandates that courts must address it squarely whenever the issue first arises.

The only judge to address it squarely found the contract

³ Appellate Courts who have reviewed Scientology policies of "Fair Game (destroy enemies)," kidnapping, espionage, obstruction of justice, tax evasion, and other crimes, have affirmed Plaintiff judgments, which can deter such behavior and thus protect the public. Church of Scientology of California v. Commissioner of Internal Revenue, (1987) 823 F.2d 1310; Church of Scientology v. I.R.S., 792 F.2d 153; In Re Search Warrant 572 F.2d 321; United States v. Heldt, 668 F.2d 1238; United States v. Hubbard, 493 F.Supp. 209; Allard v. Church of Scientology, 58 Cal.App.3d 439; Christofferson v. Church of Scientology, 644 P.2d 577; Wollersheim v. Church of Scientology of California, (1989) 260 CR 331; 212 Cal.App.3d 872, 880, 888-89; Church of Scientology v. Armstrong, (1991) 232 Cal.App.3d 1060.

Even Judge Sohigian, author of the preliminary injunction, noted Scientology's behavior is a "deviation" of "standards of ordinary...honest behavior...makes you sort of be sure you cut the deck and be sure you've counted all the cards...." (1701) Armstrong's information involved Scientology "abusing people who are weak...taking advantage of people... using techniques of coercion." Such information was "meritorious in the extreme." (1700)

Following trial in Armstrong I, Judge Breckenridge also found the testimony of Armstrong, and all of Armstrong's witnesses, five of whom signed the global settlement, "credible, extremely persuasive... their testimony was precise, accurate and rang true. The picture painted...Scientology organization is on one hand pathetic, and on the other hand outrageous." (473) From this testimony he found the organization abused its members' civil rights and through "Fair Game" doctrine, harassed and abused those persons perceived as enemies (474).

violated public policy, but afterwards no court has ruled whether that finding is binding. The contract provided that its enforcement would lie with Judge Paul Breckenridge, Jr., who presided over Church of Scientology v. Armstrong, Case No. C420153 ("Armstrong I"), the case from which the settlement arose. Judge Bruce Geernaert, who inherited the case following Judge Breckenridge's retirement, ruled, however, that he did not have jurisdiction to enforce the agreement because, despite orders to do so, Scientology had never complied with Judge Breckenridge's orders that it file a copy of the settlement agreement with the Court. Importantly, he further found that Judge Breckenridge would never have approved said agreement:

"So my belief is Judge Breckenridge, being a very careful Judge, follows about the same practice and that had he been presented that whole agreement and if he had been asked to order its performance, he would have dug his feet in because that is one of the -- I have seen -- I can't say -- I'll say one of the most ambiguous, one-sided agreements I have ever read. And I would not have ordered the enforcement of hardly any of the terms had I been asked to, even on the threat that, OK, the case is not settled..."

"We don't want to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest."

(606)

Unfortunately for the administration of justice, Scientology undeterred by and in response to Judge Geernaert's ruling, filed the instant action seeking a different ruling. Neither the trial court nor the appellate court addressed the raised issue of collateral estoppel. Neither court addressed whether Scientology's failure to provide the agreement to Judge Breckenridge prevents

Scientology from seeking enforcement thereof and ended Scientology's right to complain of Mr. Armstrong's agreement breach.

But, more importantly, in the instant action, the appellate court, in its non-published opinion, allowed the continuance of this litigation, thus refusing to protect the public from possible harm.

Thus, we Petition this highest court, where the buck stops, to decide the ultimate question as to whether or not non-cooperation agreements have any place in the administration of justice in this state or the United States, or any place else where people believe in equal rights and fair play. ⁴/

⁴ This is not the first time a litigant has sought to get these contracts before this court for review. Previously, a petition was made in Jentzch v. Corydon/Carmichael v. Corydon, Coordination No. _____. Petitioner, based in part upon information received from former high Scientology officials, made certain statements about Scientology officials Jentzch and Carmichael in the media. After the Scientologists sued for defamation, Corydon was not able to get or obtain declarations from the former Scientologists verifying what they told him because they had signed similar settlement agreements. Corydon moved for judgment on the doctrine of unclean hands as the Scientologists refused to write letters to the witnesses indicating they had no objection to their being interviewed by Corydon or voluntarily testifying. The trial court, on motion, would not rule "at that time" on the issue, but allowed Corydon to cross-complain against the officials and Scientology for spoliation of evidence. Corydon's petition sought a ruling that no plaintiff could sue for defamation and at the same time purchase non-cooperation with the defendant by key witnesses who may prove the defendant spoke truthfully, or at least without malice. The petitions were denied, and later the Scientologists dismissed litigation against Corydon.

The facts in Corydon's petition set forth a prime example as to how litigants are ill-affected by these non-cooperative agreements, how it affects the right to justice, and the great expense that can be forced upon litigants not privy to these agreements. By example, in Corydon, several of the witnesses who

(continued...)

B. Statement Of Facts

1. A Scientologist of twelve years, Armstrong left Scientology after obtaining frightening first-hand knowledge of Scientology "lies" and harassment techniques. (993-1226)

2. After Armstrong left Scientology's control, the organization declared him a "suppressive person," thus making him a target of its fair game policy. Armstrong then obtained Scientology documents that proved his assertions and sent them to his lawyers. In consequence, Scientology sued, harassed, and physically assaulted him. (492) Ultimately, Scientology v. Armstrong, L.A.S.C. No. C420153 was tried before the Honorable Judge Paul G. Breckenridge, Jr., now retired. He specifically found that the testimony of Armstrong, his wife, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas and Homer Schomer (five of whom later ultimately signed similar settlement agreements (111-116, 703), "credible, extremely persuasive... their testimony was precise, accurate and rang true. The picture painted...Scientology organization is on one hand pathetic, and on the other hand outrageous." (473) From this testimony, and voluminous documentary evidence, he found the organization abused its members' civil rights and through the fair

⁴(...continued)

signed these agreements do not reside in the State of California. They could not be subpoenaed to trial. Deposition testimony is not the same as live testimony, and the expense is great.

Scientology argued, perhaps successfully, that the only attack on the agreements could be made by the parties to them. Thus began the odyssey of this case, seeking justice. Counsel for Corydon are now involved herein.

game doctrine, harassed and abused those persons perceived as enemies (474). He found the organization to be clearly schizophrenic and paranoid, a reflection of its founder, L. Ron Hubbard. The court found Hubbard to be a "pathological liar" and that the documents in evidence presented by Armstrong reflected Hubbard's "egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against person perceived by him to be disloyal or hostile." (474)

3. There remained a cross-complaint by Armstrong against Scientology to be tried. In December of 1986, an agreement was reached between Scientology and Armstrong's attorney Michael Flynn, who in conflict with Petitioner, himself was suing Scientology, and representing other ex-Scientologists suing Scientology. This resulted in a "global settlement" wherein all the former Scientologists, Flynn, and Armstrong, signed a "mutual release of all claims and settlement agreements." Armstrong's settlement is the subject of this litigation. (111-116, 667, 751)

4. The subject contract (attached hereto as Exhibit B) prevented Armstrong from voluntarily assisting or testifying on behalf of any person adverse to Scientology or cooperating with any organization "aligned" against Scientology, and compelled him not to be amenable to service, to secrete documents, and not to assist government agencies investigating Scientology. ^{5/}

⁵ See Exhibit B: paragraph 7D (prohibits revealing experiences relating to Scientology); paragraph 7E (voluntarily assisting or cooperating with any person adverse to Scientology...nor cooperating in any manner with any organizations (continued...))

5. The agreement also provided that he would not oppose Scientology's appeal of Judge Breckenridge's findings and judgment in favor of Armstrong on the Scientology Complaint. A side agreement was entered between Armstrong's attorney Michael Flynn and Scientology, without the knowledge of Armstrong, stating that it would limit his damages claimed on any retrial of its case against Armstrong following a successful appeal to damages of \$25,001. (1253) A second side agreement between Scientology and Mr. Flynn, also which Armstrong never knew of, stated that should Flynn reimburse Armstrong the amount of the judgment obtained by Scientology in retrial, Scientology attorneys would agree to reimburse Mr. Flynn for the money he paid to Mr. Armstrong in order to satisfy the Scientology judgment. (1255-1256) ^{6/} P r i o r

⁵(...continued)

"aligned" against Scientology); 7H (not to provide testimony voluntarily or be "amenable" to service of any subpoena); 7I (not use any evidence developed in litigation in future litigation); paragraph 10 [not assist individuals, associations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interest of any entity or class of person listed above in paragraph 1 (all Scientology agencies, officers, associates, individuals, etc.)]; paragraph 18D (not disclose contents of agreement; paragraph 7E (provision to keep tape recordings re: tax fraud from department of justice (see US vs. Zolin (1987) 809 F. 2nd 1441; US vs. Zolin (1989) 109 Supreme Court 2619; US vs. Zolin (1990) 905 F.2d 1344, 1345. cert. denied, Church of Scientology v. United States (1991) 111 S.Ct. 13096-20-90 Daily Journal DAR 6890 (Scientology subject to crime fraud exception to attorney/client privilege); and Paragraph 4-B (not to oppose any appeal of the Breckenridge decision).

⁶ This illustrates the great length to which Scientology will go to protect its public image, i.e., the purchased withdrawal of finding of facts against it, to be replaced by a judgment in its favor (as there would be no opposition) for public relations purposes, keeping secret that it was a sham where Scientology
(continued...)

to and at the time of the settlement Armstrong was not aware of the side agreements between his lawyers and the lawyers for the organization that considered Gerald Armstrong as their enemy. (712-15; 771-72)

Also, without Mr. Armstrong's knowledge, Flynn agreed not to represent Armstrong further (683-685).

6. When the case was settled, Judge Breckenridge inquired if the settlement impacted the appeal, and Scientology attorneys falsely told him it did not (458). Despite his order that the agreement be filed with the Court, Judge Breckenridge was never provided the settlement agreement, nor advised of the existence of the side stipulations. (1258)

7. The plan for a sham trial failed as Judge Breckenridge's opinion was upheld on appeal. (Church of Scientology of California v. Armstrong (1991) 232 Cal.App.3d 1060)

8. Scientology first moved in Armstrong I (Case No. C420153) in Los Angeles Superior Court for an order enforcing the settlement agreement pursuant to the contractual provision that said court would be so empowered and would resolve all dispute issues. (811-830) On December 23, 1991, Judge Bruce Geernaert ruled that the court did not have jurisdiction because Scientology had failed to give the settlement agreement to Judge Breckenridge, and that even if Scientology had, Judge Breckenridge would not have approved the contract because it violated public policy, and Judge Breckenridge

⁶(...continued)
through its agreements with several attorneys would supply the money that Armstrong would pay as a result of the "fixed" judgment.

would have so ruled even under a threat that the settlement would fall apart. (606)

9. Rather than appealing Judge Geernaert's ruling, Scientology filed the herein action seeking to get a different judicial decision in a different forum. On May 28, 1992, the trial court, Honorable Ronald M. Sohigian presiding, granted a preliminary injunction preventing Armstrong from voluntarily assisting any person (not a governmental entity) intending to litigate a claim against Scientology and/or Scientologists (See Ex. C).

10. Judge Sohigian refused to enforce all other provisions of the settlement agreement, including those provisions that required Armstrong to not be "amenable to service," to not speak regarding his Scientology experiences, to not assist government agencies, and not assist persons or organizations "aligned against Scientology." (Exhibit C)

11. In making his decision, Judge Sohigian applied a "balancing" test weighing public policy of justice against policy of enforcing settlements. (Exhibit C)

12. On July 30, 1992, Armstrong appealed the granting of the partial preliminary injunction. (1728-1730)

13. The decision of the Second District Court of Appeal affirming the granting of the preliminary injunction was filed on May 16, 1994. (Ex. A)

13. In affirming the decision, the appellate court stated that the court was "correct in" balancing the interim harm to the

parties, but did not, we submit, properly assess the damage to persons other than the parties, i.e., the public in general.

ARGUMENT

III. THE CONTRACT AND INJUNCTION VIOLATE PUBLIC POLICY

A. Introduction

This Petition attempts to protect the integrity of the legal system, prevent purchased undue advantages and assist the public in reaping the benefit of our court system's ability to find "truth" and set standards and guidelines for all to follow. It seeks to put an end to judicial approval of obstruction of justice by declaring the same is an "abuse of discretion."

As stated as early as 1938, in Brown v. Freese, 28 Cal.App.2d, Cal.App.2d 608, 618:

"A bargain that has for its consideration the nondisclosure of discreditable facts ... is illegal."

And more recently in Mary R. v. B.R. Corporation (1983) 149 Cal.App.3d 308, 316 the court denounced "...giving judicial stamp of approval to a ploy ..."

"The stipulated order of confidentiality is contrary to public policy, contrary to the ideal that full and impartial justice shall be secured in every matter...we believe it clearly improper, even on stipulation of the parties, that the court should issue an order designed not to preserve the integrity and efficiency of the administration of justice...such a stipulation is against public policy, similar to an agreement to conceal judicial proceedings and to obstruct justice."

(Id.)

B. The Trial Court And The Appellate Court Erroneously Concluded That The Limited Injunction "Would Not Serve To Suppress Evidence In Legal Proceedings."

The appellate court, page 10, notes that the injunction does not restrain Armstrong from accepting service of subpoenas and then testifying fully in legal proceedings or reporting criminal conduct to the authorities. It cited Philippine Export and Foreign Loan Guarantee Corp. v. Shuidian (1990) 218 Cal.App.3d 105, 1081-1082 and Mary R. v. B & R Corp. (1983) 149 Cal.App.3d 308, 315-316.

The appellate court misread Mary R. In no way was the decision limited to regulatory agencies. It stated:

"The stipulated order of confidentiality is contrary to public policy, contrary to the ideal that full and impartial justice shall be secured in every matter...we believe it clearly improper, even on stipulation of the parties, that the court should issue an order designed not to preserve the integrity and efficiency of the administration of justice...such a stipulation is against public policy, similar to an agreement to conceal judicial proceedings and to obstruct justice.

(Id. at 316)

Mary R. stated that an order to remain quiet is contrary to public policy. A court should not issue an order designed not to preserve the integrity and efficiency of the administration of justice. In so stating, the court said that full and impartial justice shall be secured in "every matter..."

Thereafter, the court added: "... Moreover, in light of the statutory obligation of division to investigate..."

The "Moreover" was additive to the statement that the right to impartial justice should be secured in "every matter" and not just in matters investigated by regulatory authorities.

Both the trial court, and the appellate court, seem to believe that justice was not impaired because Armstrong could still be

subpoenaed to trial or deposition. But in all cases cited in which an agreement was made to not assist, parties to the contract always could have been subpoenaed to trial and always could have been ordered by a trial court to testify. The real question is whether or not a contract intending to have a person avoid the legal duty or prohibiting voluntary assistance is legal. Most persuasive, and not cited by the appellate court, is People v. Dean Richard P'icl, 31 Cal.3d 731, where the court approved criminal charges against an attorney for making a settlement agreement with a witness to do "everything within his power not to testify." (Id. at 740)

Obviously, it is not within the power of the witness to disobey a subpoena to testify if called to the stand. In any cited case, e.g., Fong, supra, Tappan, supra, this could have been done. But in each the person was to do his best not to be put in that situation. The court in P'icl stated:

"There is, of course, no talismanic requirement that a Defendant must say 'don't testify' or words tantamount thereto ... as long as his words or actions support the inference that he... sought to prevent or dissuade a potential witness from attending upon a trial... a Defendant is properly held to answer."

(Id. at 740)

In P'icl, the crime was a "bribe" to "dissuade" a party from attending (Id. at 737). This case arose in the context of a criminal prosecution, but the cited Penal Code Sec. 138 makes it a crime to form "any understanding or agreement" that a person shall "not attend" trial. The Penal Code applies to any trial or judicial proceeding, not just criminal.

Previously, this high court, in Williamson v. Superior Court

(1987) 21 Cal.3d 829, invalidated agreements to suppress evidence on public policy grounds. The court referred to the penal code, but the case itself arose in a civil context. This court stated:

"[enforcement] would be to condone defendant's concealment of evidence, in direct contravention of this court's insistence that neither party to such an agreement should receive the aid of the court in effectuating such an illegal scheme. This court cannot place its imprimatur upon planned stratagems of purchased suppression of evidence."

(Id. at 838)

B. The Trial Court And Appellate Court Failed To Recognize That An Order That Prevents A Plaintiff From Interviewing A Witness Other Than At Deposition, Interferes With The Administration Of Justice.

Witnesses out-of-state are beyond subpoena power. Out-of-state depositions are expensive, and they do not substitute for live testimony.

California has a one-deposition rule. If there is law and motion or request for injunction, a deposition may be forced to be taken before attorneys are ready. Additionally, there is rarely enough time to notice and take a deposition and obtain the deposition transcript before the motion is heard.

Scientology has attempted in the past to stop deposition by motions to quash on the grounds Petitioner agreed not to talk at all. (1294-1305) All this adds to expense.

What of the right to prepare one's case? When a witness must be deposed there is a cost per question and the opposition is looking in, objecting and otherwise hindering the inquiry.

What if an adverse plaintiff outside the state discovers petitioner but there is no time left prior to trial for deposition?

An interview can be more extensive and efficient than a cost-limited deposition. And if the party cannot afford a deposition and cannot have the benefit through prior interview to know just what a witness can testify to, then he will be forced to conduct an interview type examination of the witness during the course of trial, only because another court has ruled he can't be interviewed.

The contract, and the limited injunction, ultimately destroy faith in justice, and then justice itself. Along the way, Scientology purchases "hinderance" and "expense" for any adverse litigant. The public already believes that the rich can buy justice. We should not make the public's bleak perception more real than it already is.

**C. Public Policy Is Served By Plaintiffs
Having Fair And Impartial Access To
Prepare Their Claims Equally To That
Of The Government And Defendants.**

As stated above, Judge Sohigian denied enforcement of the settlement contract to the extent it prohibited Armstrong from speaking or assisting defendants adverse to Scientology, or any governmental agency.

In so ruling, the trial court recognized that the contract it was enforcing by injunction was unfair, thus violating public policy, if applicable to governmental agencies and/or defendants in Scientology litigation. If it is unfair to them, and interferes with the administration of justice, how does it become fair when applied to a plaintiff?

Our civil system is more than just redress. It is a fact-

finding tool, laying precedents for our lives, businesses, and affairs. It governs product liability, due care, and safety. Statutes provide civil liabilities to deter violations. To enforce public policy and deterrence, we have punitive damages. "Class actions" help large segments of the public. Civil litigation presents safeguards and warnings against individuals, civil, and governmental entities. ⁷/ In some cases, Plaintiffs are awarded attorneys fees for litigation that serves the public interest.

D. The Trial Court Cannot Rewrite The Contract To Eliminate Its Unlawful Purpose.

To enforce part of an illegal contract it must be looked to see if the agreement is "entire or separable." The key is if money consideration can be apportioned to each of many items to be formed.

"Whether a contract was entire or separable depends upon its language and subject matter, and this question is one of construction to be determined by the court according to the intention of the parties."

⁷ Remember the Pinto. What if Ford had settled with its chief engineers requiring them never to voluntarily disclose or cooperate with any injured persons claiming they were harmed by explosions from rear end collisions. Does suppression of this information serve the public?

Scientology, as well as many other self-proclaimed religions actively recruits and seeks to persuade others to follow its thinking and practices. In some cases, its requires from its followers large sums of money and personal commitment. Plaintiff suits for harm could succeed in bringing out valuable information that the public needs to know. Punitive damage awards eventually stopped Synanon's "holy war." Might there have been more public awareness through trials against People's Temple a decade ago, or in more recent history, the Branch Davidians.

Before engaging in Scientology services, wouldn't one like to know about "Fair Game" and "Billion-year contract". Certainly it is possible that a jury verdict could stop such anti-public policies. Wollersheim, supra (denying Scientology First Amendment protection due to said policies.) See Footnote 3.

(Brown v. Freese, supra, 83 P.2d at 85)

It is essential that a contract has a lawful object. (Civil Code § 1596) If there is a single unlawful object, it is void. (Civil Code § 1598) If any part of the consideration is unlawful, it is void. (Civil Code § 1608) Only when a contract has clearly severable stipulations for each of which there is a separate consideration expressed, and there is no reason to suppose the expressed consideration for one form a part of consideration for the other, can the contract be separated. (14 Cal.Jur.3d, Contracts, p. 336; McVicker v. McKenzie, 136 Cal. 656) Only if the court can lay illegal consideration to a specific portion of the contract may it enforce other parts. (Keene v. Harling, 61 Cal.2d 318) Thus, Judge Sohigian exceeded his jurisdiction by sanitizing the provisions of the contract that violated public policy so as to make the contract enforceable.

**E. Scientology Is Estopped
 By The Ruling Of Judge Geernaert.**

As stated above, Judge Geernaert ruled in Church of Scientology v. Armstrong, Case No. C420153, that the agreement was never made an order of the court, even though the agreement provided for the same, because Scientology withheld it from Judge Breckenridge, and because Judge Breckenridge would never have approved it even if it meant the settlement falling apart, because it is "not fair or in the public interest."

The rule of collateral estoppel applies to findings necessary to a judgment and not just to the judgment. (Brown v. Rhman, 231 Cal.App.3d 1458)

The proper remedy, would have been for Scientology to appeal this ruling. It did not.

Instead, it filed a separate lawsuit, seeking to obtain a different view in a different forum. This is contrary to the rules of collateral estoppel.

**F. The Agreement Is Not Enforceable Because
By Its Own Terms It Was Only To Be Enforced
By The Court In Armstrong I**

Per the contract, there was never to be an expensive separate litigation, nor a jury trial, as is now ongoing, but the summary resolution of any disputes by the court under which the agreement arose. This is stated in the last paragraph of the agreement. By Scientology's refusing to provide the agreement to Judge Breckenridge, Petitioner was denied the ability to rely on the court to approve, modify or provide safeguards concerning its terms for the public, and second became exposed to the expense of litigation the contract sought to prevent. It is unhappily ironic that Scientology has obtained a limited preliminary injunction by seeking a judicial forum outside of that which the contract established, after proceeding unsuccessfully, pursuant to the contract, to have the original court rule on its enforceability. In the agreed upon forum, Scientology v. Armstrong, Case No. C420153, it received a ruling that the terms of the agreement were not fair or in the public interest.

IV. CONCLUSION

In summation, the preliminary injunction was an abuse of discretion for the following reasons:

1. As the facts of the agreement are not in dispute, the trial court and the appellate court were mandated to address the issue as to whether or not the agreement violates public policy and to stop enforcement upon such finding. There is no balancing test.

2. The limited preliminary injunction itself violates public policy.

3. The issue of public policy and the contract's enforceability was already decided between the parties in Scientology v. Armstrong, Case No. C420153.

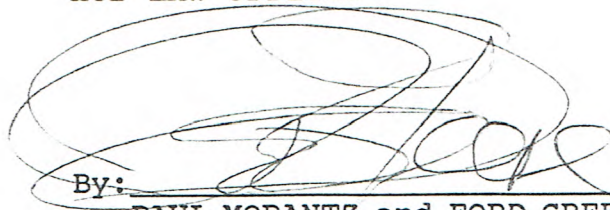
4. As the contract provided it would only be enforced by the court in Scientology v. Armstrong, Case No. C420153, and that court rejected such enforcement because Scientology had breached the agreement, ab initio, by not providing the settlement agreement to the court, and because the Court found that the contract violated public policy, Scientology lost the right of enforcement.

Most important, Petitioner prays that this court will see the importance of the issues involved and the necessity of this court to render a decision giving a clear and definite message as to what type of purchased interference in the preparation of litigation is allowed in this state, if any.

We submit that this type of contract, even limited to the partial preliminary injunction Judge Sohigian allowed, widens the advantage the rich and powerful have over poor in all litigation. This is in opposition to what the drafters of our Constitution had in mind, and it is inconsistent with the cited interpretations of fair play by this court.

DATED: June 27, 1994

HUB LAW OFFICES

A large, stylized handwritten signature in black ink, appearing to be "P. Morantz & F. Greene", written over a horizontal line.

By:

PAUL MORANTZ and FORD GREENE
Attorneys for Defendant
GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: PETITION FOR REVIEW

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Eric Lieberman
Rabinowitz, Boudin, et al.
740 Broadway, 5th Floor
N.Y., N.Y. 10003

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street
Suite 450
San Francisco, CA 94104

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Boulevard
Suite 2000
Hollywood, CA 90028

Hon. Ronald M. Sohigian
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, CA 90012

Second Districrt Court of Apeeal
300 S. Spriong, Rm 2228
Los Angeles, CA 90013

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

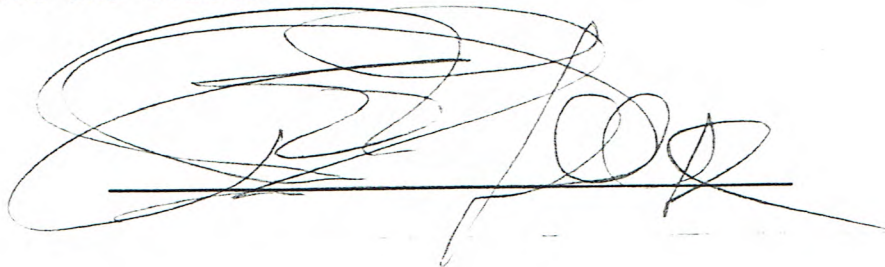
[] (Personal
Service)

I caused such envelope to be delivered by hand
to the offices of the addressee.

[X] (State)

I declare under penalty of perjury under the
laws of the State of California that the above
is true and correct.

DATED: June 27, 1994

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

CHURCH OF SCIENTOLOGY INTERNATIONAL,)
)
Plaintiff and Respondent,)
)
v.)
)
GERALD ARMSTRONG,)
)
Defendant and Appellant.)
_____)

No. B069450

(Super.Ct.No. BC052395)

COURT OF APPEAL - SECOND DIST.

FILED

MAY 16 1994

JOSEPH A. LANE

Clerk

Deputy Clerk

APPEAL from an order of the Superior Court of
Los Angeles County, Ronald M. Sohigian, Judge. Affirmed.
Ford Greene and Paul Morantz for Defendant and
Appellant.

Bowles & Moxon, Karen D. Holly, Wilson, Ryan &
Campilongo, Andrew H. Wilson, Rabinowitz, Boudin, Standard,
Krinsky & Lieberman, Eric M. Lieberman, and Michael Lee
Hertzberg for Plaintiff and Respondent.

RECEIVED

MAY 18 1994

HUB LAW OFFICES

Defendant and appellant Gerald Armstrong (Armstrong) appeals from an order granting a preliminary injunction restraining Armstrong from voluntarily giving assistance to other persons litigating or intending to litigate claims against plaintiff and respondent Church of Scientology International (Church).

The injunction was granted to enforce a settlement agreement in prior litigation between Armstrong and Church. In the settlement, Armstrong agreed he would not voluntarily assist other persons in proceedings against Church.

Armstrong does not deny violating his agreement but asserts numerous reasons why his agreement should not be enforceable. We conclude that the narrowly-limited preliminary injunction, which did not finally adjudicate the merits of Armstrong's claims, was not an abuse of the trial court's discretion to make orders maintaining the status quo and preventing irreparable harm pending the ultimate resolution of the merits.

FACTUAL AND PROCEDURAL BACKGROUND

Armstrong was a member of Church between 1969 and 1981. He became an insider of high rank, familiar with Church practices and documents. He became disillusioned and left Church in 1981. When he left, he took many Church documents with him.

The Prior Action and Settlement

Church brought the prior action against Armstrong seeking return of the documents, injunctive relief against further dissemination of information contained in them, and imposition of a constructive trust. Mary Sue Hubbard, wife of Church founder L. Ron Hubbard, intervened asserting various torts against Armstrong. Armstrong filed a cross-complaint seeking damages for fraud, intentional infliction of emotional distress, libel, breach of contract, and tortious interference with contract.

Church's complaint and Hubbard's complaint in intervention were tried in 1984 by Judge Breckenridge. That trial led to a judgment, eventually affirmed on appeal, holding Armstrong's conversion of the documents was justified because he believed the conversion necessary to protect himself from Church's claims that he had lied about Church matters and L. Ron Hubbard. (Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1063, 1073.)

Armstrong's cross-complaint in that case was settled in December 1986 by the settlement agreement which is the subject of the injunction in the present case.

In the settlement agreement, the parties mutually released each other from all claims, except the then-pending appeal of Judge Breckenridge's decision on Church's complaint, which was expressly excluded. The settlement involved a number

of persons engaged in litigation against Church, all represented by Attorney Michael Flynn. As a result of the settlement, Armstrong was paid \$800,000. Armstrong's cross-complaint was dismissed with prejudice, as agreed, on December 11, 1986.

The portions of the settlement agreement most pertinent to this appeal are paragraphs 7-G, 7-H, and 10, in which Armstrong agreed not to voluntarily assist other persons intending to engage in litigation or other activities adverse to Church.^{1/}

1. "G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology. [¶] H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed. [¶] . . . 10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement."

Paragraph 20 of the agreement authorizes its enforcement by injunction.

The Present Action

In February 1992, Church filed a complaint in the present action alleging Armstrong's violation of the settlement agreement and seeking damages and injunctive relief.

In support of its motion for a preliminary injunction, Church presented evidence that since June 1991 Armstrong had violated the agreement by working as a paralegal for attorneys representing clients engaged in litigation against Church and by voluntarily and gratuitously providing evidence for such litigation. Armstrong worked as a paralegal for Attorney Joseph Yanny, who represented Richard and Vicki Aznaran in a multimillion dollar suit against Church in federal court. Armstrong also voluntarily provided declarations for use in the Aznarans' case. Armstrong thereafter worked for Attorney Ford Greene on the Aznaran and other Church related matters.

Armstrong did not deny the charged conduct but asserted the settlement agreement was not enforceable for various reasons, primarily that it was against public policy and that he signed it under duress.

The Trial Court's Preliminary Injunction

The trial court granted a limited preliminary injunction, with exceptions which addressed Armstrong's

argument that the settlement agreement violated public policy by requiring suppression of evidence in judicial proceedings.

The court found that Armstrong voluntarily entered the settlement agreement for which he received substantial compensation, and that Armstrong was unlikely to prevail on his duress claim. The court found that Armstrong could contract as part of the settlement to refrain from exercising various rights which he would otherwise have. Balancing the interim harms to the parties, the court found that to the extent of the limited acts covered by the preliminary injunction, Church would suffer irreparable harm which could not be compensated by monetary damages, and harm for which monetary damages would be difficult to calculate. (Code Civ. Proc., § 526, subds. (a)(2), (a)(4), (a)(5).)

The court's order provides, in pertinent part:

"Application for preliminary injunction is granted in part, in the following respects only. [¶] Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following: [¶] Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons

referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it. [¶]

Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986."

The court provided the following exceptions to address Armstrong's public policy arguments: "The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order."

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DISCUSSION

The grant of a preliminary injunction does not adjudicate the ultimate rights in controversy between the parties. It merely determines that the court, balancing the relative equities of the parties, concludes that, pending a trial on the merits, the defendant should be restrained from exercising the right claimed. The purpose of the injunction is to preserve the status quo until a final determination of the merits of the action. (Continental Baking Co. v. Katz (1968) 68 Cal.2d 512, 528.)

The court considers two interrelated factors. The first is the likelihood the plaintiff will prevail at trial. The second is the interim harm the plaintiff is likely to sustain if the injunction is denied, as compared to the harm the defendant is likely to suffer if the injunction is granted. (Cohen v. Board of Supervisors (1985) 40 Cal.3d 277, 286.)

The decision to grant or deny a preliminary injunction rests in the discretion of the trial court. Accordingly, an appellate court's review on appeal from the granting of a preliminary injunction is very limited. The burden is on the appellant to make a clear showing that the trial court abused its discretion. (IT Corp. v. County of Imperial (1983) 35 Cal.3d 63, 69; Nutro Products, Inc. v. Cole Grain Co. (1992) 3

Cal.App.4th 860, 865.) Abuse of discretion means the trial court has exceeded the bounds of reason or contravened the uncontradicted evidence. (IT Corp. v. County of Imperial, supra, 35 Cal.3d at p. 69.)

Here, the trial court's memorandum decision reflects very careful consideration of the factors relevant to the granting of a preliminary injunction. The court weighed the relative harms to the parties and balanced the interests asserted by Armstrong. The court granted a limited preliminary injunction with exclusions protecting the countervailing interests asserted by Armstrong. We find no abuse of discretion. We cannot say that the trial court erred as a matter of law in weighing the hardships or in determining there is a reasonable probability Church would ultimately prevail to the limited extent reflected by the terms of the preliminary injunction.

Although Armstrong's "freedom of speech" is affected, it is clear that a party may voluntarily by contract agree to limit his freedom of speech. (See In re Steinberg (1983) 148 Cal.App.3d 14, 18-20 [filmmaker agreed to prior restraint on distribution of film]; ITT Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d 307, 319 [employee's agreement not to disclose confidential information; "it is possible to waive even First Amendment free speech rights by contract"]; Snepp v. United States (1980) 444 U.S. 507, 509, fn. 3 [book by CIA

employee subject to prepublication clearance by terms of his employment contract].)

The exceptions in the trial court's injunction assured that the injunction would not serve to suppress evidence in legal proceedings. The injunction expressly did not restrain Armstrong from accepting service of subpoenas, testifying fully and fairly in legal proceedings, and reporting criminal conduct to the authorities. (See Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian (1990) 218 Cal.App.3d 1058, 1081-1082.) This contrasts with the stipulation in Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d 308, 315-316, cited by Armstrong, which prevented a party from disclosing misconduct to regulatory authorities.

This appeal is only from the granting of a preliminary injunction which expressly did not decide the ultimate merits. As limited by the trial court here, the preliminary injunction merely restrains, for the time being, Armstrong's voluntary intermeddling in other litigation against Church, in violation of his own agreement. We decline any extended discussion of Armstrong's shotgun-style brief, which offers more than a dozen separate contentions against enforcement. It suffices to say that Armstrong has not borne his burden on appeal to demonstrate a clear abuse of discretion.

DISPOSITION

The order granting a preliminary injunction is affirmed.

NOT TO BE PUBLISHED

VOGEL (C.S.), Acting P.J.

We concur:

HASTINGS, J.

KLEIN (Brett), J.*


*Assigned by the Chairperson of the Judicial Council.

MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT

1. This Mutual Release of All Claims and Settlement Agreement is made between Church of Scientology International (hereinafter "CSI") and Gerald Armstrong, (hereinafter "Plaintiff") Cross-Complainant in Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153. By this Agreement, Plaintiff hereby specifically waives and releases all claims he has or may have from the beginning of time to and including this date, including all causes of action of every kind and nature, known or unknown for acts and/or omissions against the officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel of CSI as well as the Church of Scientology of California, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Religious Technology Center, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; all Scientology and Scientology affiliated organizations and entities and their officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Author Services, Inc., its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and its trustee; and Mary Sue Hubbard, (all hereinafter collectively referred to as the

EL 1

A.



"Releasees"). The parties to this Agreement hereby agree as follows:

2. It is understood that this settlement is a compromise of doubtful and disputed claims, and that any payment is not to be construed, and is not intended, as an admission of liability on the part of any party to this Agreement, specifically, the Releasees, by whom liability has been and continues to be expressly denied. In executing this settlement Agreement, Plaintiff acknowledges that he has released the organizations, individuals and entities listed in the above paragraph, in addition to those defendants actually named in the above lawsuit, because among other reasons, they are third party beneficiaries of this Agreement.

3. Plaintiff has received payment of a certain monetary sum which is a portion of a total sum of money paid to his attorney, Michael J. Flynn. The total sum paid to Mr. Flynn is to settle all of the claims of Mr. Flynn's clients. Plaintiff's portion of said sum has been mutually agreed upon by Plaintiff and Michael J. Flynn. Plaintiff's signature below this paragraph acknowledges that Plaintiff is completely satisfied with the monetary consideration negotiated with and received by Michael J. Flynn. Plaintiff acknowledges that there has been a block settlement between Plaintiff's attorney, Michael J. Flynn, and the Church of Scientology and Churches and entities related to the Church of Scientology, concerning all of Mr. Flynn's clients who were in litigation with any Church of Scientology or related entity. Plaintiff has received a portion of this block

amount, the receipt of which he hereby acknowledges.

Plaintiff understands that this amount is only a portion of the block settlement amount. The exact settlement sum received by Plaintiff is known only to Plaintiff and his attorney, Michael J. Flynn, and it is their wish that this remain so and that this amount remain confidential.



Signature line for Gerald Armstrong

4. For and in consideration of the above described consideration, the mutual covenants, conditions and release contained herein, Plaintiff does hereby release, acquit and forever discharge, for himself, his heirs, successors, executors, administrators and assigns, the Releasees, including Church of Scientology of California, Church of Scientology International, Religious Technology Center, all Scientology and Scientology affiliated organizations and entities, Author Services, Inc. (and for each organization or entity, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel); L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and trustee; and Mary Sue Hubbard, and each of them, of and from any and all claims, including, but not limited to, any claims or causes of action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153 and all demands, damages, actions and causes of actions of every kind and nature, known or unknown,

for or because of any act or omission allegedly done by the Releasees, from the beginning of time to and including the date hereof. Therefore, Plaintiff does hereby authorize and direct his counsel to dismiss with prejudice his claims now pending in the above referenced action. The parties hereto will execute and cause to be filed a joint stipulation of dismissal in the form of the one attached hereto as Exhibit "A".

A. It is expressly understood by Plaintiff that this release and all of the terms thereof do not apply to the action brought by the Church of Scientology against Plaintiff for Conversion, Fraud and other causes of action, which action has already gone to trial and is presently pending before the Second District, Third Division of the California Appellate Court (Appeal No. B005912). The disposition of those claims are controlled by the provisions of the following paragraph hereinafter.

B. As of the date this Settlement Agreement is executed, there is currently an appeal pending before the California Court of Appeal, Second Appellate District, Division 3, arising out of the above referenced action delineated as Appeal No. B005912. It is understood that this appeal arises out of the Church of Scientology's complaint against Plaintiff which is not settled herein. This appeal shall be maintained notwithstanding this Agreement. Plaintiff agrees to waive any rights he may have to take any further appeals from any decision eventually reached by the Court of Appeal or any rights he may have to oppose (by responding brief or any other means) any further appeals taken by the Church of

Scientology of California. The Church of Scientology of California shall have the right to file any further appeals it deems necessary.

5. For and in consideration of the mutual covenants, conditions and release contained herein, and Plaintiff dismissing with prejudice the action Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153, the Church of Scientology of California does hereby release, acquit and forever discharge for itself, successors and assigns, Gerald Armstrong, his agents, representatives, heirs, successors, assigns, legal counsel and estate and each of them, of and from any and all claims, causes of action, demands, damages and actions of every kind and nature, known or unknown, for or because of any act or omission allegedly done by Gerald Armstrong from the beginning of time to and including the date hereof.

6. In executing this Agreement, the parties hereto, and each of them, agree to and do hereby waive and relinquish all rights and benefits afforded under the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. Further, the undersigned hereby agree to the following:

A. The liability for all claims is expressly denied by the parties herein released, and this final compromise and

settlement thereof shall never be treated as an admission of liability or responsibility at any time for any purpose.

B. Plaintiff has been fully advised and understands that the alleged injuries sustained by him are of such character that the full extent and type of injuries may not be known at the date hereof, and it is further understood that said alleged injuries, whether known or unknown at the date hereof, might possibly become progressively worse and that as a result, further damages may be sustained by Plaintiff; nevertheless, Plaintiff desires by this document to forever and fully release the Releasees. Plaintiff understands that by the execution of this release no further claims arising out of his experience with, or actions by, the Releasees, from the beginning of time to and including the date hereof, which may now exist or which may exist in the future may ever be asserted by him or on his behalf, against the Releasees.

C. Plaintiff agrees to assume responsibility for the payment of any attorney fee, lien or liens, imposed against him past, present, or future, known or unknown, by any person, firm, corporation or governmental entity or agency as a result of, or growing out of any of the matters referred to in this release. Plaintiff further agrees to hold harmless the parties herein released, and each of them, of and from any liability arising therefrom.

D. Plaintiff agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other

similar form, any writing or to broadcast or to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff expressly understands that the non-disclosure provisions of this subparagraph shall apply, inter alia, but not be limited, to the contents or substance of his complaint on file in the action referred to in Paragraph 1 hereinabove or any documents as defined in Appendix "A" to this Agreement, including but not limited to any tapes, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals, or entities listed in Paragraph 1 above. The attorneys for Plaintiff, subject to the ethical limitations restraining them as promulgated by the state or federal regulatory associations or agencies, agree not to disclose any of the terms and conditions of the settlement negotiations, amount of the

settlement, or statements made by either party during settlement conferences. Plaintiff agrees that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of \$50,000 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in a constructive trust pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages are hereto acknowledged by Plaintiff.

E. With exception to the items specified in Paragraph 7(L), Plaintiff agrees to return to the Church of Scientology International at the time of the consummation of this Agreement, all materials in his possession, custody or control (or within the possession, custody or control of his attorney, as well as third parties who are in possession of the described documents), of any nature, including originals and all copies or summaries of documents defined in Appendix "A" to this Agreement, including but not limited to any tapes, computer disks, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above, all evidence of any nature, including evidence obtained from the named defendants through discovery, acquired for the purposes of this lawsuit or any lawsuit, or acquired for any other purpose

concerning any Church of Scientology, any financial or administrative materials concerning any Church of Scientology, and any materials relating personally to L. Ron Hubbard, his family, or his estate. In addition to the documents and other items to be returned to the Church of Scientology International listed above and in Appendix "A", Plaintiff agrees to return the following:

(a) All originals and copies of the manuscript for the work "Excalibur" written by L. Ron Hubbard;

(b) All originals and copies of documents commonly known as the "Affirmations" written by L. Ron Hubbard; and

(c) All documents and other items surrendered to the Court by Plaintiff and his attorneys pursuant to Judge Cole's orders of August 24, 1982 and September 4, 1982 and all documents and other items taken by the Plaintiff from either the Church of Scientology or Omar Garrison. This includes all documents and items entered into evidence or marked for identification in Church of Scientology of California v. Gerald Armstrong, Case No. C 420 153. Plaintiff and his attorney will execute a Joint Stipulation or such other documents as are necessary to obtain these documents from the Court. In the event any documents or other items are no longer in the custody or control of the Los Angeles Superior Court, Plaintiff and his counsel will assist the Church in recovering these documents as quickly as possible, including but not limited to those tapes and other documents now in the possession of the United States District Court in the case of United States v. Zolin, Case No. CV



85-0440-HLH(Tx), presently on appeal in the Ninth Circuit Court of Appeals. In the event any of these documents are currently lodged with the Court of Appeal, Plaintiff and his attorneys will cooperate in recovering those documents as soon as the Court of Appeal issues a decision on the pending appeal.

To the extent that Plaintiff does not possess or control documents within categories A-C above, Plaintiff recognizes his continuing duty to return to CSI any and all documents that fall within categories A-C above which do in the future come into his possession or control.

F. Plaintiff agrees that he will never again seek or obtain spiritual counselling or training or any other service from any Church of Scientology, Scientologist, Dianetics or Scientology auditor, Scientology minister, Mission of Scientology, Scientology organization or Scientology affiliated organization.

G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology.

H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make

himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed.

I. The parties hereto agree that in the event of any future litigation between Plaintiff and any of the organizations, individuals or entities listed in Paragraph 1 above, that any past action or activity, either alleged in this lawsuit or activity similar in fact to the evidence that was developed during the course of this lawsuit, will not be used by either party against the other in any future litigation. In other words, the "slate" is wiped clean concerning past actions by any party.

J. It is expressly understood and agreed by Plaintiff that any dispute between Plaintiff and his counsel as to the proper division of the sum paid to Plaintiff by his attorney of record is between Plaintiff and his attorney of record and shall in no way affect the validity of this Mutual Release of All Claims and Settlement Agreement.

K. Plaintiff hereby acknowledges and affirms that he is not under the influence of any drug, narcotic, alcohol or other mind-influencing substance, condition or ailment such that his ability to fully understand the meaning of this Agreement and the significance thereof is adversely affected.

L. Notwithstanding the provisions of Paragraph 7(E) above, Plaintiff shall be entitled to retain any artwork created by him which concerns or relates to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above provided that such artwork never be disclosed either directly or indirectly, to anyone. In the event of a disclosure in breach of this Paragraph 7(L), Plaintiff shall be subject to the liquidated damages and constructive trust provisions of Paragraph 7(D) for each such breach.

8. Plaintiff further agrees that he waives and relinquishes any right or claim arising out of the conduct of any defendant in this case to date, including any of the organizations, individuals or entities as set forth in Paragraph 1 above, and the named defendants waive and relinquish any right or claim arising out of the conduct of Plaintiff to date.

9. This Mutual Release of All Claims and Settlement Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. This Agreement may be amended only by a written instrument executed by Plaintiff and CSI. The parties hereto have carefully read and understand the contents of this Mutual Release of All Claims and Settlement Agreement and sign the same of their own free will, and it is the intention of the parties to be legally bound hereby. No other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically

incorporated herein shall be deemed to in any way exist or bind any of the parties hereto.

10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement.

11. The parties to this Agreement acknowledge the following:

A. That all parties enter into this Agreement freely, voluntarily, knowingly and willingly, without any threats, intimidation or pressure of any kind whatsoever and voluntarily execute this Agreement of their own free will;

B. That all parties have conducted sufficient deliberation and investigation, either personally or through other sources of their own choosing, and have obtained advice of counsel regarding the terms and conditions set forth herein, so that they may intelligently exercise their own judgment in deciding whether or not to execute this Agreement; and

C. That all parties have carefully read this Agreement and understand the contents thereof and that each reference in this Agreement to any party includes successors, assigns, principals, agents and employees thereof.

12. Each party shall bear its respective costs with respect to the negotiation and drafting of this Agreement and

all acts required by the terms hereof to be undertaken and performed by that party.

13. To the extent that this Agreement inures to the benefit of persons or entities not signatories hereto, this Agreement is hereby declared to be made for their respective benefits and uses.

14. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

15. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

16. In the event any provision hereof be unenforceable, such provision shall not affect the enforceability of any other provision hereof.

17. All references to the plural shall include the singular and all references to the singular shall include the plural. All references to gender shall include both the masculine and feminine.

18.(A) Each party warrants that they have received independent legal advice from their attorneys with respect to the advisability of making the settlement provided for herein and in executing this Agreement.

(B) The parties hereto (including any officer, agent, employee, representative or attorney of or for any party) acknowledge that they have not made any statement,

representation or promise to the other party regarding any fact material to this Agreement except as expressly set forth herein. Furthermore, except as expressly stated in this Agreement, the parties in executing this Agreement do not rely upon any statement, representation or promise by the other party (or of any officer, agent, employee, representative or attorney for the other party).

(C) The persons signing this Agreement have the full right and authority to enter into this Agreement on behalf of the parties for whom they are signing.

(D) The parties hereto and their respective attorneys each agree not to disclose the contents of this executed Agreement. Nothing herein shall be construed to prevent any party hereto or his respective attorney from stating that this civil action has been settled in its entirety.

(E) The parties further agree to forbear and refrain from doing any act or exercising any right, whether existing now or in the future, which act or exercise is inconsistent with this Agreement.

19. Plaintiff has been fully advised by his counsel as to the contents of this document and each provision hereof. Plaintiff hereby authorizes and directs his counsel to dismiss with prejudice his claims now pending in the action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153.

20. Notwithstanding the dismissal of the lawsuit pursuant to Paragraph 4 of this Agreement, the parties hereto agree that the Los Angeles Superior Court shall retain

jurisdiction to enforce the terms of this Agreement. This Agreement may be enforced by any legal or equitable remedy, including but not limited to injunctive relief or declaratory judgment where appropriate. In the event any party to this Agreement institutes any action to preserve, to protect or to enforce any right or benefit created hereunder, the prevailing party in any such action shall be entitled to the costs of suit and reasonable attorney's fees.

21. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date opposite their names.

Dated: December 6, 1985

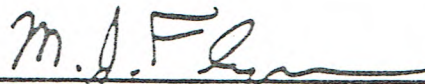

GERALD ARMSTRONG


Witness

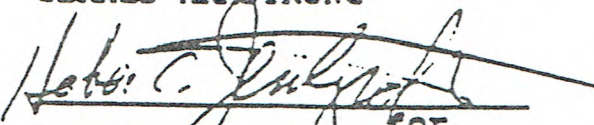

Witness

Dated: 12/6/86

APPROVED AS TO FORM AND
CONTENT:


MICHAEL J. FLYNN
Attorney for
GERALD ARMSTRONG

Dated: December 11, 1986


for
CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992

Honorable Ronald M. Schigian, Judge

1

M. Cervantes, Deputy Clerk

None

(E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

Counsel For
Plaintiff

vs.

Gerald Armstrong, et al.

Counsel For
Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

In this matter heretofore taken under submission on May 27, 1992, the court now makes the following ruling.

1 Plaintiff's legal remedies are inadequate insofar as the scope of relief ordered below is concerned, but not otherwise. CCP 526(4) and (5).

2 The threatened acts which are restrained by the order referred to below, but only those threatened acts, would do irreparable harm to plaintiff which could not be compensated by monetary damages. CCP 526(2).

3 On the basis of the instant record, there is a reasonable probability that plaintiff will prevail after trial of this case in the respects restrained by this order. CCP 526(1); cf., San Francisco Newspaper Printing Co., Inc. vs. Superior Court (Miller) (1985) 170 Cal. App. 3d 438.

4 Plaintiff is likely to suffer greater injury from denial of the preliminary injunction the terms of which are set out below than the injury which defendant is likely to suffer if it is granted. See Robbins vs. Superior Court (County of Sacramento) (1985) 38 Cal. 3d 199, 206.

5 The granting of a preliminary injunction in the terms set out below will preserve the status quo pending trial.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992

Honorable Ronald M. Bohigian, Judge
1aM. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

Counsel For
Plaintiff

vs.

Gerald Armstrong, et al.

Counsel For
Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

6 Application for preliminary injunction is granted in part, in the following respects only.

Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following:

Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it.

Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.

The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
Honorable Ronald M. Schigian, Judge
1b

M. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

Counsel For
Plaintiff

VS.

Gerald Armstrong, et al.

Counsel For
Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY
27, 1992

The application for preliminary injunction is otherwise denied.

7 The restraints referred to in sec. 6, above, will become effective upon plaintiff's posting an undertaking in the sum of \$70,000 pursuant to CCP 529(a) by 12:00 noon on June 5, 1992.

8 The restraints referred to in sec. 6, above, properly balance and accommodate the policies inherent in: (a) the protectable interests of the parties to this suit; (b) the protectable interests of the public at large; (c) the goal of attaining full and impartial justice through legitimate and properly informed civil and criminal judicial proceedings and arbitrations; (d) the gravity of interest involved in what the record demonstrates defendant might communicate in derogation of the contractual language; and (e) the reasonable interpretation of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986. The fair interpretation of all the cases cited by the parties indicates that this is the correct decisional process. The law appropriately favors settlement agreements. Obviously, one limitation on freedom of contract is "public policy"; in determining what the scope of the public policy limitation on the parties' rights to enforcement of their agreement in the specific factual context of this case, the court has weighed the factors referred to in the first sentence of this section. Litigants have a substantial range of contractual freedom, even to the extent of agreeing not to assert or exercise rights which they might otherwise have. The instant record shows that plaintiff was substantially compensated as an aspect of the agreement, and does not persuasively support defendant's claim of duress or that the issues involved in this preliminary injunction proceeding were precluded by any prior decision.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992

Honorable Ronald M. Sohigian, Judge
lcM. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

Counsel For
Plaintiff

vs.

Gerald Armstrong, et al.

Counsel For
Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY
27, 1992

9 The court does not dispositively decide the underlying merits of the case except for this preliminary determination. CCP 526(1); Baypoint Mortgage Corp. vs. Crest Premium Real Estate etc. Trust (1985) 168 Cal. App. 3d 818, 823.

10 Plaintiff is ordered give written notice by mail by June 5, 1992, including in that written notice a statement regarding whether plaintiff has or has not posted the undertaking referred to in sec. 7, above, and attaching to that written notice evidence showing that the undertaking has been posted if that is the fact.

DATED: May 28, 1992.

RONALD M. SOHIGIAN

 RONALD M. SOHIGIAN
 Judge of the Superior Court

A copy of this minute order is sent to counsel via United States mail this date.